

Executive Summary – Enforcement Matter – Case No. 41828
Kenneth D. Densman dba Telferner Grocery
RN102490455
Docket No. 2011-0941-PWS-E

Order Type:

Findings Agreed Order

Findings Order Justification:

Three or more enforcement actions (NOVs, orders, etc.) over the prior five year period for the same violation(s).

Media:

PWS

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Telferner Grocery, 202 South Wood Street, Telferner, Victoria County

Type of Operation:

Public water supply

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: December 2, 2011

Comments Received: No

Penalty Information

Total Penalty Assessed: \$5,105

Amount Deferred for Expedited Settlement: \$0

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$170

Total Due to General Revenue: \$4,935

Payment Plan: 35 payments of \$141 each

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Average

Site/RN - Average by Default

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

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RN102490455
Docket No. 2011-0941-PWS-E

Investigation Information

Complaint Date(s): N/A
Complaint Information: N/A
Date(s) of Investigation: April 28, 2011
Date(s) of NOE(s): June 1, 2011

Violation Information

Failed to collect routine distribution water samples for coliform analysis and failed to provide public notification of the failure to sample [30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B) and TEX. HEALTH & SAFETY CODE § 341.033(d)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

The Order will require the Respondent to:

- a. Within 10 days, begin complying with applicable coliform monitoring requirements by collecting routine coliform distribution samples and providing water that meets the provisions regarding microbial contaminants. This provision will be satisfied upon six consecutive months of compliance monitoring and reporting;
- b. Within 30 days, implement procedures to ensure that all necessary public notifications are provided in a timely manner to the customers of the Facility;
- c. Within 45 days, submit written certification demonstrating compliance with Ordering Provision b; and
- d. Within 190 days, submit written certification demonstrating compliance with Ordering Provision a.

Litigation Information

Date Petition(s) Filed: N/A
Date Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s): N/A
Settlement Date: N/A

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Kenneth D. Densman dba Telferner Grocery
RN102490455
Docket No. 2011-0941-PWS-E

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Stephen Thompson, Enforcement Division,
Enforcement Team 2, MC 169, (512) 239-2558; Debra Barber, Enforcement Division,
MC 219, (512) 239-0412.

TCEQ SEP Coordinator: N/A

Respondent: Kenneth Densman, Owner, Telferner Grocery, P.O. Box 429, Telferner,
Texas 77988

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

| | | | | | | |
|--------------|-----------------|-------------|------------------|-------------|----------------|-------------|
| DATES | Assigned | 31-May-2011 | Screening | 13-Jun-2011 | EPA Due | 31-Dec-2010 |
| | PCW | 17-Jun-2011 | | | | |

RESPONDENT/FACILITY INFORMATION

| | | | |
|-----------------------------|--|---------------------------|-------|
| Respondent | Kenneth D. Densman dba Telferner Grocery | | |
| Reg. Ent. Ref. No. | RN102490455 | | |
| Facility/Site Region | 14-Corpus Christi | Major/Minor Source | Minor |

CASE INFORMATION

| | | | |
|--|---------------------|------------------------------|--------------------|
| Enf./Case ID No. | 41828 | No. of Violations | 1 |
| Docket No. | 2011-0941-PWS-E | Order Type | Findings |
| Media Program(s) | Public Water Supply | Government/Non-Profit | No |
| Multi-Media | | Enf. Coordinator | Stephen Thompson |
| | | EC's Team | Enforcement Team 2 |
| Admin. Penalty \$ Limit Minimum | \$50 | Maximum | \$1,000 |

Penalty Calculation Section

| | | |
|---|-------------------|---------|
| TOTAL BASE PENALTY (Sum of violation base penalties) | Subtotal 1 | \$3,000 |
|---|-------------------|---------|

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

| | | | |
|---------------------------|-------------------|--------------------------------|---------|
| Compliance History | 57.0% Enhancement | Subtotals 2, 3, & 7 | \$1,710 |
|---------------------------|-------------------|--------------------------------|---------|

Notes: Enhancement for eleven NOV's with same/similar violations and one NOV with dissimilar violations.

| | | | | |
|--------------------|----|------------------|-------------------|-----|
| Culpability | No | 0.0% Enhancement | Subtotal 4 | \$0 |
|--------------------|----|------------------|-------------------|-----|

Notes: The Respondent does not meet the culpability criteria.

| | | |
|--|-------------------|-----|
| Good Faith Effort to Comply Total Adjustments | Subtotal 5 | \$0 |
|--|-------------------|-----|

| | | | |
|-------------------------|-------------------|-------------------|-----|
| Economic Benefit | 0.0% Enhancement* | Subtotal 6 | \$0 |
|-------------------------|-------------------|-------------------|-----|

Total EB Amounts \$395
Approx. Cost of Compliance \$360
*Capped at the Total EB \$ Amount

| | | |
|-----------------------------|-----------------------|---------|
| SUM OF SUBTOTALS 1-7 | Final Subtotal | \$4,710 |
|-----------------------------|-----------------------|---------|

| | | | |
|---|------|-------------------|-------|
| OTHER FACTORS AS JUSTICE MAY REQUIRE | 8.4% | Adjustment | \$395 |
|---|------|-------------------|-------|

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement recommended for the recovery of avoided costs of compliance.

| | |
|-----------------------------|---------|
| Final Penalty Amount | \$5,105 |
|-----------------------------|---------|

| | | |
|-----------------------------------|-------------------------------|---------|
| STATUTORY LIMIT ADJUSTMENT | Final Assessed Penalty | \$5,105 |
|-----------------------------------|-------------------------------|---------|

| | | | |
|-----------------|----------------|-------------------|-----|
| DEFERRAL | 0.0% Reduction | Adjustment | \$0 |
|-----------------|----------------|-------------------|-----|

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral is recommended for Findings Orders.

| | |
|------------------------|---------|
| PAYABLE PENALTY | \$5,105 |
|------------------------|---------|

Screening Date 13-Jun-2011

Docket No. 2011-0941-PWS-E

PCW

Respondent Kenneth D. Densman dba Telferner Grocery

Policy Revision 2 (September 2002)

Case ID No. 41828

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102490455

Media [Statute] Public Water Supply

Enf. Coordinator Stephen Thompson

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

| Component | Number of... | Enter Number Here | Adjust. |
|-------------------------------|--|-------------------|---------|
| NOVs | Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>) | 11 | 55% |
| | Other written NOVs | 1 | 2% |
| Orders | Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>) | 0 | 0% |
| | Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission | 0 | 0% |
| Judgments and Consent Decrees | Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>) | 0 | 0% |
| | Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government | 0 | 0% |
| Convictions | Any criminal convictions of this state or the federal government (<i>number of counts</i>) | 0 | 0% |
| Emissions | Chronic excessive emissions events (<i>number of events</i>) | 0 | 0% |
| Audits | Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>) | 0 | 0% |
| | Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>) | 0 | 0% |
| Please Enter Yes or No | | | |
| Other | Environmental management systems in place for one year or more | No | 0% |
| | Voluntary on-site compliance assessments conducted by the executive director under a special assistance program | No | 0% |
| | Participation in a voluntary pollution reduction program | No | 0% |
| | Early compliance with, or offer of a product that meets future state or federal government environmental requirements | No | 0% |

Adjustment Percentage (Subtotal 2) 57%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

Enhancement for eleven NOVs with same/similar violations and one NOV with dissimilar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 57%

Screening Date 13-Jun-2011

Docket No. 2011-0941-PWS-E

PCW

Respondent Kenneth D. Densman dba Telferner Grocery

Policy Revision 2 (September 2002)

Case ID No. 41828

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102490455

Media [Statute] Public Water Supply

Enf. Coordinator Stephen Thompson

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B) and Tex. Health & Safety Code § 341.033(d)

Violation Description

Failed to collect routine distribution water samples for coliform analysis for the months of March, May through October 2010 and December 2010 through April 2011 and failed to provide public notification of the failure to sample for the months of March, May through October and December 2010.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

| Release | Harm | | |
|-----------|-------|----------|-------|
| | Major | Moderate | Minor |
| Actual | | | |
| Potential | X | | |

Percent 25%

>> Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|---------------|-------|----------|-------|
| | | | |

Percent 0%

Matrix Notes

Failure to perform routine distribution coliform sampling may allow a significant amount of undetected contaminants that exceed levels protective of human health to be distributed to the public.

Adjustment \$750

\$250

Violation Events

Number of Violation Events 12

365 Number of violation days

| | | |
|-------------------------|--------------|---|
| mark only one with an x | daily | |
| | weekly | |
| | monthly | X |
| | quarterly | |
| | semiannual | |
| | annual | |
| | single event | |

Violation Base Penalty \$3,000

Twelve monthly events are recommended, calculated for the months in which no samples were collected.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

| | | |
|---------------|---|---------------|
| Extraordinary | | |
| Ordinary | | |
| N/A | X | (mark with x) |

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$3,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$395

Violation Final Penalty Total \$5,105

This violation Final Assessed Penalty (adjusted for limits) \$5,105

Economic Benefit Worksheet

Respondent Kenneth D. Densman dba Telferner Grocery
Case ID No. 41828
Reg. Ent. Reference No. RN102490455
Media Public Water Supply
Violation No. 1

| Percent Interest | Years of Depreciation |
|------------------|-----------------------|
| 5.0 | 15 |

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
| No commas or \$ | | | | | | | |

Delayed Costs

| | | | | | | | |
|--------------------------|--|--|--|------|-----|-----|-----|
| Equipment | | | | 0.00 | \$0 | \$0 | \$0 |
| Buildings | | | | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | \$0 | \$0 |
| Engineering/construction | | | | 0.00 | \$0 | \$0 | \$0 |
| Land | | | | 0.00 | \$0 | n/a | \$0 |
| Record Keeping System | | | | 0.00 | \$0 | n/a | \$0 |
| Training/Sampling | | | | 0.00 | \$0 | n/a | \$0 |
| Remediation/Disposal | | | | 0.00 | \$0 | n/a | \$0 |
| Permit Costs | | | | 0.00 | \$0 | n/a | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | n/a | \$0 |

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

| | | | | | | | |
|-------------------------------|-------|-------------|-------------|------|------|-------|-------|
| Disposal | | | | 0.00 | \$0 | \$0 | \$0 |
| Personnel | | | | 0.00 | \$0 | \$0 | \$0 |
| Inspection/Reporting/Sampling | | | | 0.00 | \$0 | \$0 | \$0 |
| Supplies/equipment | | | | 0.00 | \$0 | \$0 | \$0 |
| Financial Assurance [2] | | | | 0.00 | \$0 | \$0 | \$0 |
| ONE-TIME avoided costs [3] | \$300 | 31-Mar-2010 | 30-Apr-2011 | 2.00 | \$30 | \$300 | \$330 |
| Other (as needed) | \$60 | 30-Jun-2010 | 31-Mar-2011 | 1.67 | \$5 | \$60 | \$65 |

Notes for AVOIDED costs

The avoided costs include the estimated amount to collect a total of twelve routine samples (\$25 per sample) and provide public notice for the failure to collect the samples (\$5 per notice), calculated for the months in which no samples were collected and during the period that a public notice was required.

Approx. Cost of Compliance

\$360

TOTAL

\$395

Compliance History

Customer/Respondent/Owner-Operator: CN602689994 DENSMAN, KENNETH D Classification: AVERAGE Rating: 3.01

Regulated Entity: RN102490455 TELFERNER GROCERY Classification: AVERAGE Site Rating: 3.01
BY DEFAULT

ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 2350067
PETROLEUM STORAGE TANK REGISTRATION 52551

Location: 202 S WOOD ST, TELFERNER, TX, 77988

TCEQ Region: REGION 14 - CORPUS CHRISTI

Date Compliance History Prepared: June 13, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: June 13, 2006 to June 13, 2011

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Stephen Thompson Phone: (512) 239-2558

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2010 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

| | | |
|----|------------|----------|
| 1 | 01/19/2010 | (788355) |
| 2 | 05/02/2011 | (914830) |
| 3 | 05/03/2011 | (915179) |
| 4 | 05/03/2011 | (915206) |
| 5 | 05/03/2011 | (915220) |
| 6 | 05/03/2011 | (915237) |
| 7 | 05/03/2011 | (915284) |
| 8 | 05/03/2011 | (915303) |
| 9 | 05/03/2011 | (915343) |
| 10 | 05/03/2011 | (915369) |
| 11 | 05/03/2011 | (915388) |
| 12 | 05/27/2011 | (915479) |
| 13 | 05/24/2011 | (922055) |

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 01/19/2010 (788355)

Self Report? NO

Citation: 30 TAC Chapter 290, SubChapter D 290.39(d)
30 TAC Chapter 290, SubChapter D 290.39(e)

Classification: Moderate

30 TAC Chapter 290, SubChapter D 290.39(m)
 Description: Failure to provide written notification to the commission of the startup of a new water system or reactivation of an existing public water supply system.

Date: 05/03/2010 (914830) CN602689994
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
 Description: TCR Routine Monitoring Violation 03/2010 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
 Description: TCR PN Routine Monitoring Violation 03/2010 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 07/06/2010 (915179) CN602689994
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
 Description: TCR Routine Monitoring Violation 05/2010 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
 Description: TCR PN Routine Monitoring Violation 05/2010 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 07/23/2010 (915206) CN602689994
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
 Description: TCR Routine Monitoring Violation 06/2010 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
 Description: TCR PN Routine Monitoring Violation 06/2010 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 08/31/2010 (915220) CN602689994
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
 Description: TCR Routine Monitoring Violation 07/2010 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
 Description: TCR PN Routine Monitoring Violation 07/2010 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 09/29/2010 (915237) CN602689994
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
 Description: TCR Routine Monitoring Violation 08/2010 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
 Description: TCR PN Routine Monitoring Violation 08/2010 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 10/26/2010 (915284) CN602689994
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
 Description: TCR Routine Monitoring Violation 09/2010 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
 Description: TCR PN Routine Monitoring Violation 09/2010 - Failure to post public notice for not

collecting any routine monitoring sample(s).

Date: 12/07/2010 (915303) CN602689994
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
Description: TCR Routine Monitoring Violation 10/2010 - Failure to collect any routine

monitoring sample(s).

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: TCR PN Routine Monitoring Violation 10/2010 - Failure to post public notice for not
collecting any routine monitoring sample(s).

Date: 02/11/2011 (915343) CN602689994
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
Description: TCR Routine Monitoring Violation 12/2010 - Failure to collect any routine
monitoring sample(s).

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: TCR PN Routine Monitoring Violation 12/2010 - Failure to post public notice for not
collecting any routine monitoring sample(s).

Date: 03/10/2011 (915369) CN602689994
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
Description: TCR Routine Monitoring Violation 01/2011 - Failure to collect any routine
monitoring sample(s).

Date: 03/31/2011 (915388) CN602689994
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
Description: TCR Routine Monitoring Violation 02/2011 - Failure to collect any routine
monitoring sample(s).

Date: 04/29/2011 (922055) CN602689994
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
Description: TCR Routine Monitoring Violation 03/2011 - Failure to collect any routine
monitoring sample(s).

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
KENNETH D. DENSMAN DBA
TELFERNER GROCERY
RN102490455**

**§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY
§**

AGREED ORDER DOCKET NO. 2011-0941-PWS-E

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Kenneth D. Densman dba Telferner Grocery ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this agreement to the Commission.

The Respondent understands that he has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon the Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. The Respondent owns and operates a public water supply at 202 South Wood Street in Telferner, Victoria County, Texas (the "Facility") that has one service connection and serves at least 25 people per day for at least 60 days per year.
2. During a record review conducted on April 28, 2011, TCEQ staff documented that the Respondent did not collect routine distribution water samples for coliform analysis for the months of March, May through October 2010 and December 2010 through April 2011 and did not provide a public notification of the failure to sample for the months of March, May through October and December 2010.
3. The Respondent received notice of the violations on June 6, 2011.

II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 2, the Respondent failed to collect routine distribution water samples for coliform analysis and failed to provide public notification of the failure to sample, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B) and TEX. HEALTH & SAFETY CODE § 341.033(d).
3. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of Five Thousand One Hundred Five Dollars (\$5,105) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049(b). The Respondent has paid One Hundred Seventy Dollars (\$170) of the administrative penalty. The remaining amount of Four Thousand Nine Hundred Thirty-Five Dollars (\$4,935) of the administrative penalty shall be payable in 35 monthly payments of One Hundred Forty-One Dollars (\$141) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed an administrative penalty in the amount of Five Thousand One Hundred Five Dollars (\$5,105) as set forth in Section II, Paragraph 4 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Kenneth D. Densman dba Telferner Grocery, Docket No. 2011-0941-PWS-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The Respondent shall undertake the following technical requirements:
 - a. Within 10 days after the effective date of this Agreed Order, begin complying with applicable coliform monitoring requirements by collecting routine coliform distribution samples and providing water that meets the provisions regarding microbial contaminants, in accordance with 30 TEX. ADMIN. CODE § 290.109. This provision will be satisfied upon six consecutive months of compliance monitoring and reporting;
 - b. Within 30 days after the effective date of this Agreed Order, implement procedures to ensure that all necessary public notifications are provided in a timely manner to the customers of the Facility, in accordance with 30 TEX. ADMIN. CODE § 290.122;
 - c. Within 45 days after the effective date of this Agreed Order, submit written certification as described below in Ordering Provision No. 2.d, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.b; and
 - d. Within 190 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Public Drinking Water Section Manager
Water Supply Division, MC 155
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
6. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

7. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
8. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
9. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

For R. Hyde
For the Executive Director

12-19-11
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of Kenneth D. Densman dba Telferner Grocery. I am authorized to agree to the attached Agreed Order on behalf of Kenneth D. Densman dba Telferner Grocery, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, Kenneth D. Densman dba Telferner Grocery waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Kenneth Densman
Signature

10-25-2011
Date

KENNETH DENSMAN
Name (Printed or typed)
Authorized Representative of
Kenneth D. Densman dba Telferner Grocery

OWNER
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section III, Paragraph 1 of this Agreed Order.